Filed 6/15/12 In re B.C. CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re B.C. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. C.C., Defendant and Appellant.	E054950 (Super.Ct.Nos. J227482 & J236095) OPINION

APPEAL from the Superior Court of San Bernardino County. Wilfred J. Schneider, Jr., Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County Counsel, for Plaintiff and Respondent.

Mother appeals from a juvenile court order for a continuance of a hearing pursuant to Welfare and Institutions Code[1] section 366.26. The children were declared dependents due to domestic violence and drug abuse by both parents. B.B. was moved from the placement where his siblings resided because of his severe behavioral problems.[2] The new caretakers, although attached to B.B., sought additional time before committing to adoption at the time of the section 366.26 hearing, so the San Bernardino County Children and Family Services (CFS) requested a six-month continuance of the hearing. The court granted the continuance, which was not opposed by mother, and mother filed this appeal.

On appeal, mother argues there is insufficient evidence to support an implied finding that B.B. is adoptable because the social worker's reports, which were duly filed, read, and considered by the court, were not admitted into evidence. We affirm.

BACKGROUND

On May 31, 2009, the San Bernardino Child and Adult Abuse Hotline contacted the San Bernardino Department of Children and Family Services (CFS) regarding three

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[1] All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

[2] The parents have other children who are not subjects of this appeal. Father is not a party to this appeal. References to the minor's sibling or half-siblings and the father are included only where necessary to provide context.

children, K.C. (then age 4), B.B.[3] (then age one and N.A. (then age 10 months), after the parents were involved in a physically violent altercation that sent mother, who was seven months pregnant with her fourth child, to the emergency room, and resulted in father's incarceration for domestic violence and being under the influence of drugs. Mother reported that father had hit and kicked her in a struggle over the 10-month-old N.A.

Mother refused treatment at the hospital, but she admitted to a deputy that she used methamphetamine. She was unable to provide the accurate birthdates of her children. Father admitted to being under the influence of marijuana and using methamphetamine. Mother's teenage sister informed the sheriff's deputy who responded to the 911 call regarding the incident that mother also used heroin.

CFS filed a dependency petition alleging neglect (§ 300, subd. (b)) in that the parents failed to protect or provide regular care for the children due to domestic violence in the home and the parents' use of illegal drugs, and that father made no provision for support due to his incarceration. (§ 300, subd. (g).) The children were detained. On August 12, 2009, the children were placed in the home of their maternal grandmother.

On August 31, 2009, the court made true findings as to all of the allegations and found the children came within the provisions of section 300, subdivisions (b) and (g). The court removed the children from the parents' custody and maintained them in the

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[3] "B.B." stands for "Baby Boy," the name by which the child was referred in the trial court proceedings due to the lack of a name on his birth certificate. He was also called T.A. For continuity, we will refer to him as B.B.

home of their maternal grandmother. The court also ordered the parents to participate in reunification services. Later that same day, mother gave birth to S.A., who had drugs in his system. S.A. was placed with his siblings in the home of the maternal grandmother and was subsequently declared a dependent child.

By the time of the six-month review hearing, neither parent had participated regularly in the court-ordered treatment program, nor had they made substantive progress in their case plan. Both continued to abuse controlled substances, engage in domestic violence, and had been arrested for drug-related crimes. The social worker recommended that services be terminated and that the children remain with the maternal grandmother. The court terminated services at the hearing and referred the matter for a section 366.26 hearing to select and implement a permanent plan of guardianship.

Unfortunately, before the guardianship could be established, the maternal grandmother was involved in a motor vehicle accident while she was under the influence of alcohol, with K.C. in the car. The maternal grandmother had left the other three children with their paternal grandmother, and it was learned that she had allowed mother to have unsupervised contact with the children. K.C. was injured in the accident, so all the children were detained from the grandmother. On July 8, 2010, a supplemental petition, pursuant to section 387, was filed, alleging that the prior disposition had been ineffective in protecting the children.

Prior to the jurisdictional hearing on the 387 petition, CFS submitted its section 366.26 report. CFS recommended a planned permanent living arrangement (PPLA) for

the children because the original permanent plan of guardianship was no longer possible. The adoption assessment, submitted on September 2, 2010, indicated that the four children were adoptable, but were difficult to place due to the size of the sibling group. Because mother was pregnant again, the size of the sibling group was about to increase, making them difficult to place. The jurisdictional phase of the section 387 petition took place on October 19, 2010, where the court made a true finding.

In its July 21, 2010, report for the section 366.26 hearing, CFS recommended that a PPLA was most appropriate, until an adoptive home could be identified. Mother continued to visit, but in October, 2010, CFS reported that she did not interact well with the children. In the meantime, the children were having behavior problems; in particular, B.B. was aggressive and assaultive.

On October 25, 2010, mother filed a petition to modify the previous order (§ 388) terminating services on the ground of changed circumstance. Mother asserted she had been clean and sober for seven months and had graduated from a drug rehabilitation program, had attended substance abuse class, engaged in programs dealing with anger management, domestic violence and parenting, and was attending 12-step meetings. Despite her allegation of being clean and sober, on November 14, 2010, mother gave birth to a baby girl who tested positive for methamphetamines at birth. On January 4, 2011, the court conducted a disposition hearing as to the section 387 supplemental petition, denying services to the parents, and denied mother's 388 petition citing a lack of changed circumstances.

An adoptive home was identified in March 2011, and the children were transitioned into the home in April 2011. By June 2011, both N.A. and B.B. demonstrated assaultive behaviors toward their siblings, and all four children regressed in their behavior after visits with their parents. B.B.'s behavior problems escalated to the point he was moved to a respite home in July 2011. The family who provided respite care for B.B. became his sixth placement, but the caretakers were not yet ready to commit to long-term placement. For that reason, the selection and implementation hearing concerning B.B. was continued for 90 days without objection.

On September 27, 2011, the court noted that B.B. was not yet stabilized in his current placement. On October 6, 2011, the date set for the section 366.26 hearing respecting B.B., CFS requested a continuance of the hearing. The court suspended sibling visitation over the objection of the father, authorized CFS to place B.B. in a concurrent planning home, and continued the matter for 90 days, without objection. On October 31, 2011, mother filed a notice of appeal.[4]

DISCUSSION

Mother argues that there is insufficient evidence to support the court's "implied finding of adoptability" because the social worker's reports were not received in

[4] The notice of appeal omits any information about the order or judgment that was appealed. We treat the notice as an appeal from order of October 6, 2011, continuing the hearing on the section 366.26 hearing for 90 days.

evidence. Because the court merely continued the section 366.26 hearing, and made no findings whatsoever regarding the minor's adoptability, we disagree.

County counsel argues that mother forfeited any challenge to the order of continuance because she did not object. A reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been made but was not made in the trial court. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293; *In re G.M.* (2010) 181 Cal.App.4th 552, 563-564.) Application of the forfeiture rule is not automatic where an appeal raises only a question of law. (*S.B.*, at p. 1293; see also *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314.) We agree that the issue was forfeited where the only substantive issue discussed at the hearing was both not objected to and not challenged on appeal. Nevertheless, we address the merits of mother's unusual and unsupported claim.

First, the court continued the entire section 366.26 hearing; it did not conduct a bifurcated hearing pursuant to section 366.26, subdivision (c)(3), as mother assumes. The record reflects that county counsel requested "a continuance of the .26 hearing." Contrary to mother's assertion, county counsel did not request to proceed under section 366.26, subdivision (c)(3).

Second, there was no express *or* implied finding of adoptability, nor does the juvenile court law authorize an implied finding of adoptability. Considering that the continuance was necessitated by problems with B.B.'s stability in his placement, there is no room to argue that the court made an implied finding of adoptability.

Third, even if the court had conducted the hearing pursuant to section 366.26, subdivision (c)(3), mother's assertion that CFS was required to introduce its reports into evidence is unsupported by any statutory or decisional authority. To the contrary, the statutory scheme only contemplates the admission into evidence of the social study prepared for the jurisdictional hearing. (§ 355, subd. (b).)

Status review reports and reports prepared for the section 366.26 hearing must only be *filed* with the court, and the court is required to *review and consider* them. (§§ 366.05 [reports filed for status review hearings]; 366.2 [supplemental report is required to be filed pursuant to section 366]; 366.21, subd. (c) [social worker shall file a supplemental report with the court]; 366.21, subd. (e) [court shall review and consider the social worker's report and recommendations]; 366.21, subd. (f) [court shall review and consider the social worker's report and recommendations]; 366.22, subd. (a) [court shall review and consider the social worker's report and recommendations]; 366.25, subd. (a)(1) [court shall review and consider the social worker's report and recommendations]; 366.26, subd. (b) [court shall review the report as specified in sections 361.5, 366.21, 366.22, or 366.25, and shall indicate that it has read and considered it].)

Nowhere in the statutory scheme is there a requirement that a social worker's reports be admitted into evidence for status review or permanency planning hearings, so it is unsurprising that mother has cited no authority to support this position. Because no issue regarding the admission of evidence at a section 366.26 hearing is properly before us, we find no error.

DISPOSITION

The judgment if affirmed.

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RAMIREZ
P.J.

We concur:

RICHLI
J.

MILLER
J.